IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION No. 1795 OF 2007

Rajkumar Sadh — Petitioner

Vs.

The State of Maharashtra
and Ors. — Respondents

Mr. T.P.S. Kang, advocate
for the petitioner.

Mr. V. B. Konde-Deshmukh, APP for
respondent.

CORAM : R.M.S. KHANDEPARKAR
AND
Mrs. V.K. TAHILRAMANI, JJ.

DATE : OCTOBER 18, 2007.

P.C. (PER : R.M.S. KHANDEPARKAR, J.)

. Taken on board on request.

2. By the present petition, the petitioner is seeking direction to the Metropolitan Magistrate to take cognizance of the offence in accordance with Section 190 read with Section 200 of Cr. P.C., and further direction for issuance of process as well as some consequential reliefs in the matter.

3. Attention is drawn by the learned advocate appearing for the petitioner to the order dated 13th June 2007 by which the learned Magistrate had issued direction for re-investigation into the matter. The record apparently discloses that the investigation agency had not carried out the investigation properly, therefore, "C" summary was rejected. Not only that even for recording the FIR there was hesitation on the part of the investigation agency and it has only after directed by this Court that the FIR came to be registered. According to the petitioner, it was therefore, necessary for the learned Magistrate to proceed with the inquiry and record the statement of the complainant and to inquire into the matter by himself. Attention is sought to be drawn to the decision of the Apex Court in **Jagdish Ram Vs. State of Rajasthan and Anr. reported in 2004 Cri.L.J. 5008**.

4. The order dated 13th June 2007 passed by the learned Magistrate apparently disclose

that the learned Magistrate having not been satisfied with the investigation so far carried out by the police authorities, rejected "C" summary filed by the investigating agency, and directed re-investigation in the matter. The direction is obviosly in exercise of powers under S. 202 (1) of Cr.P.C. Once the Magistrate upon consideration of the materials before it, finds it necessary to issue direction for further investigation by the police authorities in exercise of powers under S. 202 of Cr.P.C., which is obviously a discretionary power of the Magistrate, it cannot be said that the High Court in exercise of writ jurisdiction should direct the Magistrate to proceed with the Inquiry in the same. The order of re-investigation was passed on 13th June 2007 we are in the midst of October 2007. In case there is any delay on the part of the investigating agency in completing the investigation, nothing prevents the petitioner from approaching the Magistrate for issuance of further direction in that regard. However, merely because on the

earlier occassion investigating agency had failed to carry out the investigation properly and adequately, it cannot be said that in spite of the specific order by the Magistrate, there would be again failure on the part of the investigating agency.

5. In the decision of the Apex Curt in **Jagdish Ram's case (supra),** where the proceedings were sought to be referred to the statements of witnesses recorded by the Magistrate under Ss. 200 and 202 Cr.P.C. the Magistrate had only to decide whether sufficient ground exists or not for further proceeding in the matter. It is well settled that notwithstanding the opinion of the police, a Magistrate is empowered to take cognizance if the materials on record make out a case for the said purpose. As far as proceeding with the matter by itself is concerned, it is a discretion of the Magistrate either to proceed with the inquiry by himself by examining the witnesses or to direct the police authorities to investigate into the matter. Once such a discretion has

been exercised without any arbitrary exercise of powers or in the absence of any mala fide alleged against the Magistrate, the question of interference in such order by this Court in exercise of powers under Art. 226 of the Constitution of India does not arise. Suffice to say that Magistrate has already directed re-investigation in the matter. Magistrate has also prima-facie found that offences are alleged to have been committed and therefore, the same need investigation. In these circumstances, the Magistrate who is siezed of the matter and having proceeded in accordance with the provisions of law, there is no need for intereference in exercise of Writ Jurisdiction in the impugned order. For the reasons stated above, the petition fails and is hereby rejected.

Sd/-
[R.M.S. KHANDEPARKAR, J.]

Sd/-
[Smt. V. K. TAHILRAMANI,J.]